

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FLEXIBLE STEEL LACING COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1747

Decision No. CU 884

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by FLEXIBLE STEEL LACING COMPANY in the amount of \$2,870.43 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized,

expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of Illinois and that at all times between 1907 and presentation of this claim on April 21, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that all of its stockholders were residents of the United States and assumes that substantially all of them were United States nationals.

The record in this claim discloses that claimant was owed sums by various Cuban consignees for merchandise sold and delivered to those consignees.

Additionally, the record includes letters from banks to the claimant which disclose that the purchase prices of the goods were paid by the various consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban government officials. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees with the dates on which payments were made by the consignees, or the dates on which payments were acknowledged by the banks.

<u>BANK</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DATE OF PAYMENT OR ACKNOWLEDGEMENT</u>
Bank of Novia Scotia	Santos Bouza y Cia. S.A.	\$421.83	March 1, 1960
Trust Co. of Cuba	A. Solares y Cia. S. en C.	720.83	January 13, 1960
Trust Co. of Cuba	Dcmenech & Co. S.A.	752.00	February 11, 1960
Trust Co. of Cuba	Soto Rodriguez y Cia.	542.52	March 10, 1960
Royal Bank of Canada	Victor G. Mendoza Co., S.A.	433.25	August 10, 1960

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to the claimant corporation.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

- On \$720.83 from January 14, 1960
- On \$752.00 from February 12, 1960
- On \$421.83 from March 2, 1960
- On \$542.52 from March 11, 1960
- On \$433.25 from August 11, 1960.

CERTIFICATION OF LOSS

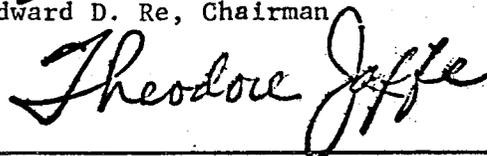
The Commission certifies that FLEXIBLE STEEL LACING COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Eight Hundred Seventy Dollars and Forty-Three Cents (\$2,870.43) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JAN 10 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

VERIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the file
decision in FEB 12 1962
[Signature]
[Stamp]